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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/761,143	01/16/2001	Muralcedharan G. Nair	MSU 4.1-541	4327

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EXAMINER

PATTEN, PATRICIA A

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 02/07/2002

12

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/761,143

Applicant(s)

NAIR ET AL.

Examiner

Patricia A Patten

Art Unit

1651

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 January 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. *upon filing of a Notice of Appeal*

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1,3-6,15-18 and 27-34.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☒ Other: Please see Addendum to Advisory Action attached hereto.

### **Addendum to Advisory Action**

Claims 3-6, 15-18 and 27-34 are pending in the application.

The Amendment After Final Rejection filed 1/28/02 will be entered upon the timely filing of a Notice of Appeal, however do not place the claims in condition for allowance for the following reasons:

Applicants have amended the claims to incorporate a limitation which reads '...and an anthocyanin which is hydrolyzable to cyanidin...'. This limitation does not change the meets and bounds of the term 'anthocyanin' because all anthocyanins are degraded *in-vivo* to cyanidin as taught by Applicants (p. 16 – Please note that the 3' methoxy of peonidin may be hydrolyzed to hydroxy). Thus, the addition of this language does not overcome the rejections on the merits set forth in the Final Office Action dated 10/30/01.

Applicants argue that because the Instant specification teaches both cyanidin and an anthocyanin which is hydrolysable to cyanidin, that the claims are fully enabled. However, it is noted that the claims state 'providing a mixture of cyanidin and an anthocyanin which is hydrolysable to cyanidin.' There is no teaching in the Instant specification as filed of a mixture of a cyanidin with a specific anthocyanin. Thus, one

of skill in the art would need to guess exactly what anthocyanin the claim is referring to lacking clear guidance within the Instant specification as filed.

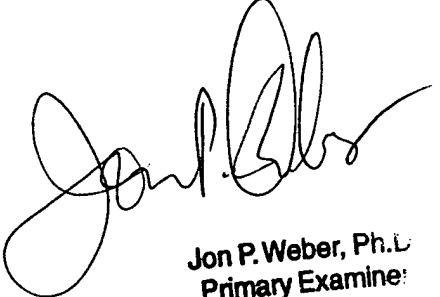
Applicants further argue that because the structures proposed by Wurm et al. on p.2062 are different than the anthocyanins presented in the Instant specification, and thus the Wurm et al. reference is not applicable to the rejection under 35 U.S.C. 103(a). Applicants are directed toward the figure at the bottom of page 2065 which clearly shows cyanidin, whereby the substituent in the #4 position could have been CH<sub>2</sub>. Thus, Wurm et al. clearly taught cyanidin. Further, Applicants are arguing limitations which do not appear in the claimed invention. Wurm et al. Clearly taught that all anthocyanins were beneficial for treating inflammation, and Applicant's have broadly claimed a composition and methods for treating inflammation with cyanidin and an anthocyanin which is hydrolysable to cyanidin. Because all anthocyanins are hydrolysable to cyanidin, and because Lietti et al. clearly taught that cyanidin possessed anti-inflammatory activities, the teachings of Wurm et al. coupled with Lietti et al. obviate the claimed invention.

Claims 3-6, 15-18 and 27-34 remain rejected on the merits for the reasons set forth in the Final Office Action dated 10/30/01.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Patricia Patten, whose telephone number is (703)308-1189. The examiner can normally be reached on M-F from 9am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.



Jon P. Weber, Ph.D.  
Primary Examiner